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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,566	01/15/2002	Yakov Reznichenko	2550/118	4679
2101	7590	10/17/2003	EXAMINER	
BROMBERG & SUNSTEIN LLP 125 SUMMER STREET BOSTON, MA 02119-1618			ROBINSON, MARK A	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/047,566		REZNICHENKO, YAKOV	
	Examiner		Art Unit	
	Mark A. Robinson		2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 and 10-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-9 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the species shown in fig. 6 in Paper No. 4 is acknowledged. The traversal is on the ground(s) that the application includes generic claims which cover the three disclosed species. This is not found persuasive because only the presence of an *allowable* generic claim is sufficient to effect rejoinder of non-elected claims which depend from or otherwise include the limitations of the *allowable* generic claim. The allowability of the claims in the application has not heretofore been determined.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-3, 7-9 and 16 read on the elected species, with claims 1, 2, 7, 8 and 16 being generic.

Claims 4-6 and 10-15 are withdrawn from consideration as being drawn to non-elected subject matter.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1,7 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by applicant's admission of the prior art shown in fig. 5.

Prior art fig. 5 shows a switching apparatus including a first(120) and second(130) plurality of mirrors, and covering lenses(510,520) disposed over the mirrors (i.e. in the incoming/outgoing light path) for adjusting an optical field.

4. Claims 1-3,7-9 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Neilson et al 2003/0002783.

Neilson shows a switching apparatus including a first(105) and second(115) plurality of mirrors, and covering lenses(107,117) disposed over the mirrors (i.e. in the incoming/outgoing light path) for adjusting an optical field. Neilson shows in fig. 5 (note lens 507) that these lenses may be

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plano-convex positive with the convex surface facing away from the plurality of mirrors.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 2,3,8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission of the prior art shown in fig. 5 in view of Neilson.

Although not shown in prior art fig. 5, use of a plano-convex positive lens such as shown by Neilson would have been obvious to the ordinarily skilled artisan at the time of invention in order to allow for receipt by the mirror array of diverging beams as taught by Neilson.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ford et al,

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Meyers, and Pu all show various arrangements for optical switching devices.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Robinson whose telephone number is (703) 305-3506.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn, can be reached at (703) 305-0024. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

MR

10/7/03


MARK A. ROBINSON
PRIMARY EXAMINER